

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LISA DIANE MAY,

Defendant-Appellant.

UNPUBLISHED

July 23, 2013

No. 308504

Wayne Circuit Court

LC No. 10-002623-FH

Before: STEPHENS, P.J., and WILDER and OWENS, JJ.

PER CURIAM.

A jury convicted defendant of three counts of aggravated stalking, MCL 750.411i(2)(b). Defendant was sentenced to 18 months' probation for all three counts of aggravated stalking. Defendant appeals by right. For the reasons set forth below, we affirm.

Defendant argues that the prosecution failed to present sufficient evidence of aggravated stalking. We disagree.

We review de novo challenges to the sufficiency of the evidence. *People v Harverson*, 291 Mich App 171, 177; 804 NW2d 757 (2010). “[W]e review the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the crime were proved beyond a reasonable doubt.” *People v Portellos*, 298 Mich App 431, 443; 827 NW2d 725 (2012).

“Aggravated stalking consists of the crime of ‘stalking’, MCL 750.411h(1)(d), and the presence of an aggravating circumstance specified in MCL 750.411i(2).” *People v Threatt*, 254 Mich App 504, 505; 657 NW2d 819 (2002).

Stalking is:

[A] willful course of conduct involving repeated or continuing harassment of another individual that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested, and that actually causes the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested. [MCL 750.411i(e).]

Harassment is:

[C]onduct directed toward a victim that includes, but is not limited to, repeated or continuing unconsented contact that would cause a reasonable individual to suffer emotional distress and that actually causes the victim to suffer emotional distress. Harassment does not include constitutionally protected activity or conduct that serves a legitimate purpose. [MCL 750.411i(d).]

To constitute a “course of conduct,” the statute requires “2 or more separate noncontinuous acts.” MCL 750.411i(1)(a). Defendant first argues that the testimony about defendant’s contacts was too vague and nonspecific regarding dates and times to establish two or more separate noncontinuous acts. We disagree. The 17-year-old son of Richard and Charlotte Yee, the couple to whom defendant directed her conduct, saw defendant yelling and swearing at his family on four or five occasions. Moreover, the Yees’ 15-year-old son experienced defendant’s yelling and swearing on 16 occasions. Defendant swore at Charlotte Yee’s children and dared Charlotte to come across the fence between their homes approximately six times. In 2009, defendant tried to throw Charlotte off the Yees’ porch and was convicted of assault. Therefore, there was sufficient evidence for a rational trier of fact to find that defendant engaged in a willful course of conduct.

Defendant next argues that there was insufficient evidence of unconsented contact to constitute harassment under the statute because the Yees could have avoided the problem by remaining inside their house and not confronting defendant. We disagree. An unconsented contact is “any contact with another individual that is initiated or continued without that individual’s consent or in disregard of that individual’s expressed desire that the contact be avoided or discontinued.” MCL 750.411i(1)(f). On several occasions, the Yees could hear defendant yelling at them even while they were inside their house. In addition, the Yees called the police at least four times in order to stop defendant’s behavior. Defendant also threw snow at the Yee’s children. Thus, defendant’s conduct constituted unconsented contact.

Defendant’s conduct is specifically described as unconsented contact by the statute: “[u]nconsented contact includes . . . following or appearing within the sight of that individual.” MCL 750.411i(1)(f). On multiple occasions, defendant appeared within the sight of the Yees while swearing and threatening them. Defendant also appeared within the sight of the Yees on February 12, 2010, when she exposed herself to the Yees. Defendant’s conduct constitutes more than the statutorily required two unconsented contacts.

Defendant also argues the 2009 assault for which defendant was convicted was not a separate act of stalking because defendant was not convicted of stalking after the assault. We disagree. Aggravated stalking simply requires a “willful course of conduct involving repeated or continuing harassment. . . .” MCL 750.411i(1)(e). There is no indication in the statute that the separate act must also result in a stalking conviction, and defendant offers no authority to that end. However, even if the statute could be read to exclude the 2009 incident, there were still more than two other instances of unconsented contact to support the conviction.

After the 2009 incident the Yees’ 17-year-old son witnessed defendant yelling and swearing at his family on four or five occasions. The Yees’ 17-year-old son witnessed defendant

yelling and swearing at his family on four or five occasions. The Yees' 15-year-old son witnessed defendant yelling and swearing on 16 occasions. Moreover, on another occasion, defendant ran her lawnmower in her yard next to the younger Yee children while they were playing in the sandbox in their yard getting them dirty. The final occasion, on February 12, 2010, began with defendant yelling and swearing at the Yee's house and exposing herself to the Yees. Therefore, there was sufficient evidence to establish a willful course of conduct beyond a reasonable doubt.

Finally, defendant argues there was insufficient evidence presented concerning the 2009 assault to reasonably conclude that defendant's actions caused Charlotte emotional distress. Defendant argues that because there was insufficient evidence of emotional distress, there was insufficient evidence of harassment, and therefore insufficient evidence of stalking. See MCL 750.411i(d), (e). We disagree. Emotional distress is "significant mental suffering or distress that may, but does not necessarily require, medical or other professional treatment or counseling." MCL 750.411i(1)(c). The Yees testified about the fear they experienced as a result of defendant's conduct after the 2009 assault. Moreover, Charlotte experienced mental health issues after the contacts with defendant. Charlotte was prescribed medication for these mental health issues that arose after defendant's repeated contacts. Therefore, there was sufficient evidence to establish that defendant's actions during the 2009 assault and afterwards could cause a reasonable person emotional distress and that defendant's actions actually caused Charlotte emotional distress.

Affirmed.

/s/ Cynthia Diane Stephens
/s/ Kurtis T. Wilder
/s/ Donald S. Owens